

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
December 18, 2014

Meeting called to order at 6:02 p.m.

Board Members Present: Karen Kalmar, Deborah Driscoll, David Lincoln, Ann Grinnell, Robert Harris

Members absent: Tom Emerson; Mark Alesse

Staff: Chris DiMatteo, Town Planner

Pledge of Allegiance

Minutes: December 11, 2014

Ms. Kalmar moved to accept the minutes as submitted

Mr. Lincoln seconded

Motion carried by all members present (5-0-0)

Public Comment: There was no public comment.

OLD BUSINESS

ITEM 1 – Board Member Items / Discussion

- Action List

Ms. Kalmar asked about what is meant by "site development pre-meeting; CMS construction inspection". Discussion followed regarding whether the code addresses this issue and existing CMA involvement in construction inspection for major site plan or subdivision, and involvement of Code Enforcement in the inspection process.

Ms. Davis: If there is a review checklist, it would be beneficial for the Board to know what the checklist involves before a project comes to the Board.

Ms. Fisk: In discussions with Mr. Mylroie, a site development pre-meeting would occur before any site work/development begins, where the applicant, CMA, Planning and Code staff meet to coordinate construction start dates and inspection schedules, and review the approved plan so that all parties are aware of approval conditions, the start and the progress of a project after Board approval.

Ms. Grinnell: Understood the pre-meeting had to do with meeting with the Fire Chief, DPW, etc. before the Board actually reviews the project.

Ms. Davis: Would like to know what staff reviews and discusses with the applicant prior to Board review.

Mr. DiMatteo: Pre-construction meeting would be after Board approval; the pre-meeting with applicants prior to Board review would be a different process.

Ms. Grinnell: Would like to see a list at the January 22 meeting of what staff reviews with the applicant pre-Board review.

- Proposed Amendments to Town Council– 12/8/14 Meeting

Mr. DiMatteo: Everything will be on the table for Council consideration on January 5, excluding the LED ordinance revision which was adopted.

Ms. Kalmar: The Town Manager and Councilor comments received do not allow for Board review and comment.

Mr. DiMatteo: He responded to the Proposal Review group (Town Manager, Clerk, Fire Chief) comments under separate cover.

Mr. Lincoln: This is all very confusing with the multitude of documents, comments from Councilors Dennett and Denault, etc. and would like a summary of what is going forward at this point.

Mr. DiMatteo: Proposed this be further reviewed at the end of the meeting. Item B includes minor changes suggested by Councilor Dennett to the Town Manager. This item was removed from the list because of a lack of proper notice. This item could then be scheduled for a public hearing on January 8 to meet the notice requirements, and then forward to Council for consideration at their January 26 meeting.

Ms. Kalmar moved to schedule a public hearing for items 16.10.9.1.4, 16.9.3.8 and 16.10.9.1.5 as presented December 18, 2014.

Ms. Davis seconded

Ms. Davis: Did the Board or Mr. Dennett remove references to 10 years and three years?

Mr. DiMatteo: The Board made the substantive changes. Mr. Dennett's edits were format and grammar only.

Discussion followed regarding what prompts the need and number of public notices and number of public hearings.

Motion carried by all members present (5-0-0)

- Route 1 – BP District TPB Advisory Committee
General discussion followed. Mr. Lincoln: Who is on the committee, what is the objective and status? Mr. DiMatteo: Will follow up on this and provide update at the January 22 meeting. Ms. Grinnell: Suggested Mr. Cochran or other member of this group meet with the Board as well to provide an update on the Committee status.
- Overlay Zone (Kittery Crossing and Coastal Route 1 Malls)
Ms. Davis: Tom Emerson and Susan Tuveson were on this committee.
Ms. Grinnell: This item should also be included on the January 22 meeting for an update.
- Committee Updates
 - Comprehensive Plan:
Ms. Davis: The Committee will meet again on January 14.
Ms. Grinnell: The Board needs a list of Committees where a Board representative is needed. Mr. DiMatteo will provide a list to the Board for review.
 - Port Authority:
Ms. Grinnell: Workshop was held on December 17 to review Bylaws; met with the Town Attorney regarding mooring issues; the Port Authority appears to be getting business in order.

Mr. Lincoln: What is the purpose of Board participation in all these committees? Are Board members to provide reports on committees activities that are relevant to the Board?

Ms. Grinnell: The committees involve development in Town, and it is an avenue for Board members to be aware of what is going on, through member reports, before something suddenly appears before the Board.

- Amended Bylaws
Ms. Kalmar: The draft is not yet complete, with new sections added addressing ex parte communication and workshops. The final update can be provided in the January 8 packets to be discussed at the January 22 meeting.
Ms. Davis: Council will be meeting soon to discuss the process for volunteer appointments to boards and committees. There may be some things that come out of that meeting that could affect our bylaws.
Ms. Grinnell: The Council meeting will be held on December 22 and does not want to hold this up awaiting their decision. The Port Authority is facing the same issue and will update their bylaws once Council has acted.

Mr. Lincoln: Spoke with the Council Chair and was told the public would not be invited to speak at the meeting, and this would be the first of several meetings on the topic. It makes sense to move forward with this document now. What was the stimulus for the re-write of the bylaws?

Ms. Kalmar: Councilor Dennett's 2013 corrections were to address the use of 'shall' and 'must' in the document. From there, the Board added needed sections.

Ms. Davis: Stated if she could, she would attend the December 22 meeting.

Mr. DiMatteo: The language in the ordinance references site inspections and the bylaws should reflect the same. The ordinance is unclear regarding notices for site walks.

Mr. Lincoln: In recent email communications, it was noted site walks are for the edification of Board members and communication during site walks should be addressed in the bylaws.

Mr. DiMatteo: Public hearings are where abutters concerns and comments are heard.

Ms. Kalmar: In practice, questions from the public have been allowed during site walks if they are made through the Chair.

Mr. Lincoln: This is what needs to be made clear and included in the document for consistency.

Mr. Harris: Questions should be deferred to public hearings, allowing the abutter to think about what they want to ask.

Ms. Davis: A statement should be developed to be shared with the public and Board during site walks regarding process and how questions will be answered so they will be heard and included on the record, which is better done at the public hearing, though question should be considered at site walks..

Ms. Grinnell: Suggestions regarding the statement should be shared at the January 8 meeting for consideration and discussion at the second meeting in January.

- 2015 Board Officers - Completed at the December 11, 2014 meeting.
- Other
 - Ms. Davis: Received a phone message from Mike Young, an abutter, requesting rescheduling of the Betty Welch Road site walk to a more convenient time, such as Saturday. People may think this site walk has been scheduled too quickly, but this was done to avoid viewing the site with snow cover. Another site walk can be scheduled in the future, if needed. Ms. Grinnell: This walk is for the education of the Board and those now on the Board who have not seen the site. Mr. DiMatteo: Spoke with Mr. Young who seemed to understand the Board's position and project status. Ms. Grinnell: We should move ahead with the schedule.
 - Ann Grinnell: Asked for Board permission to sign pending plans and findings though she was not Chair at the time of Board approval. Board members agreed this was in order.

ITEM 2 – Town Planner Items:

A. Memorial Circle Improvement Plan.

Requested an update to be discussed at either the second meeting in January or February.

Construction is to start next summer.

B. KACTS Grant for Route One By-Pass locale.

Met with MDOT, consultant, KACTS and Norm Albert. First step is for improvements inventory, with possible draft in February. With regard to the trestle underpass, the state is looking to the Town to take over the bypass. MDOT explained that all local structures are on a state list and are part of their capital improvements maintenance. Ms. Davis: Work needs to be done in this area if the town is responsible for maintenance, i.e. snow removal.

C. Bike/Pedestrian Plan

Ms. Grinnell: Perhaps Tom Emerson can update the Board on this issue at the January 22 meeting since he brought it up. Mr. Lincoln: Would like to know what the objective and purpose of the bike/pedestrian plans. Mr. DiMatteo: He will provide a historical outline of these plan maps and determine the Committee makeup, as well as work with the Maine Bicycle Coalition. Mr. Harris:

Don't understand what improvements can be provided out in the boonies. Ms. Davis: A fair amount of information was prepared by Steve Workman for the Comprehensive Plan Update Committee and she will look into that. What is the status of sidewalks on Rt. 103 and impact on bicyclists? Ms. Grinnell: Perhaps Mr. DiMatteo can look into this.

D. Kittery Foreside Committee

Ms. Grinnell: This came up before Council as there is a Kittery Foreside Committee reference in the Code. This Committee has not been practicing for some time. Does the Committee have a charge?

Ms. Davis: Feels the Committee should meet with the planning office on projects prior to Board review. Discussion followed regarding the Kittery Foreside Transportation committee. Ms. Kalmar: This group referenced in the Code is a design review group required under Title 16.3.2.15.F. Mr.

DiMatteo: In working with the Town Manager and in an opinion from the Town Attorney, there is no standing committee, as the charge had an expiration date. There is clarity now that the committee does not exist. Ms. Grinnell: Requests this in writing from the Town Attorney. Mr. Lincoln: Is it required or just referenced in the Code? Either way, this needs to be clarified, and the procedure for design review may need to be changed. Ms. Kalmar: There is a project soon before us referencing the KFC and if we do not follow code requirements, challenges could be raised by opponents. Mr. DiMatteo: The Attorney's opinion addresses this scenario. The KFC task is not approval, but to provide recommendation. The opinion was that the Board could act in its place. The Board should still consider the questions raised on this item in their packets as they move forward. Ms. Grinnell: This will be discussed further at the January 22 meeting.

E. Other

Comprehensive Plan: Found the need for a consultant to help pull together the existing work and the work that still needed to be done.

NEW BUSINESS

ITEM 3 – Town Code Amendment - Title 16.2.2 Definitions – Selected Commercial Recreation. Action: discuss amendment. Proposed amendment provides flexibility in what activities are considered as commercial recreation, and to specify those activities that are expressly prohibited.

Ms. Davis: Suggested reaching out to Charlie Williams for input.

Mr. DiMatteo: Summarized the definition should be flexible enough to allow for the inclusion of appropriate activities, but also to restrict specific activities Town-wide or by zone. Does the Board have a preference? Ms. Kalmar: Flexibility should be allowed, but specific restrictions need to be included.

Ms. Davis: With the allowance for the Board to restrict activities not specifically identified; and pay close attention to noise and odors. Earledean Wells: The Board should be able to restrict activities located near wetlands or shoreland areas, such as a golf course or go-cart track.

Discussion followed regarding specific uses, i.e.: shooting ranges; limiting some activities by zone and permitted uses.

ITEM 4 –Town Code Amendment - Title 5.10 Use of the Public Way. Action: discuss amendment. Proposed amendment allows for expand the current provision to other non-residential zones and also addresses liability and removal of furnishings.

Ms. Grinnell: Summarized the amendment previously applied only to the Foreside and had a sunset clause. The new language addresses provisions to all non-residential zones without an expiration date.

Discussion followed regarding Council authority (use of the right-of-way) and Board/Planning/Code authority (administrative approval of permits). Ms. Kalmar: In favor of changes as there is

Administrative review by CEO and Planner. Discussion followed regarding responsibility for maintenance of the right-of-way; obstruction-free areas utilized for site furnishings. Mr. Harris: Noted he is against allowing furnishings on sidewalks altogether. Mr. DiMatteo: If there is not adequate

clearance for pedestrians, a permit would not be issued. Mr. Lincoln: Would like to see a map and permit to help better understand this process. Ms. Davis: The Board should be involved with the creation

of the maps to be ultimately approved by Council. Ms. Grinnell: The next step would be to have staff prepare maps for Board review (February 22). Ms. Davis: If a pay-per-bag program is instituted in Town, trash will still have to be picked up. Mr. DiMatteo: Will confirm whether Council can consider a new amendment that is not Title 16 related.

ITEM 5 – Town Code Amendment - Title 16.7.3.5.6 Nonconforming Structure Reconstruction. Action: discuss amendment. Proposed amendment addresses an omission in the current code related to reconstructing nonconforming structures outside of the Shoreland Overlay Zone. General discussion followed regarding no fault and willful acts; proposal is to mimic state requirements for reconstruction in the shoreland zone; requirement period for reconstruction, start vs. finish; impact of building permit periods; in 16.7.3.5.6.B re: 'no fault or action by the owner', confirm this is the state's language. This item will be re-written and reviewed in February.

Recess

Item 1B (cont'd):

Ms. Kalmar: In reference to comments (December 2, 2014) from the Proposal Review Group's review of Title 16 amendments:

- Item 4 (page 4) Title 16.2.2: Does not believe the wording should be re-considered. The underlying rationale was to have a partial deduction for land with substantial development constraints.
- Item 4 (page 4) Title 16.7.8.3 (lines 93-95), the reference should be renamed as suggested, but should remain in this location so residents can easily see that Net Residential Acreage does not apply to single divisions while also being directed to the pertinent ordinance section for such divisions.
- Item 6 needs to be further reviewed. Additionally the existing Title 16.9.1.4.3 is missing from the proposed amendment language, which she believes is an unintentional omission. Mr. DiMatteo: Item 6 should be removed from Council consideration and re-visited; additionally Item 7 is similar and should also be removed from Council consideration at this time.

Ms. Kalmar: Board members should have the updated November 10 document.

Mr. DiMatteo: Rather than revising the November 10 document, an additional memorandum should be included noting omission of Item 6 and 7 from Council consideration.

Ms. Kalmar moved to adjourn

Ms. Davis seconded

Motion carried unanimously

The Kittery Planning Board meeting of December 18, 2014 adjourned at 8:45 p.m.

Submitted by Jan Fisk, Recorder, December 27, 2014.